IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No. 850 of 2004

Tulshiram Kisan Gaikwad & 6 others .. Appellants
V/s.
Shri Motiram Laxman Gaikwad .. Respondent

Mr. P.N. Joshi for the Appellants
None present for the Respondent

CORAM : P.V. KAKADE, J.
DATED : 24.06.2005

P.C.:-

1. The Appellant has preferred this Appeal against the judgment and order passed by the 4th Additional District Judge, Nashik, dismissing the Appeal against the Appellant and confirming the decree passed by Joint Civil Judge J.D. Dindori dated 30.4.2002 decreeing the Suit for perpetual injunction against the Defendant.

2. I have heard the learned counsel for the Appellant. The Plaintiff had filed Suit against the Defendant for perpetual injunction on the ground that the suit properties were partitioned and were respectively shared by the parties and the Defendants were obstructing the possession of the Plaintiff only due to the reason that the mutation entry was showing joint possession of the properties. The learned Trial Judge adjudicated the dispute on the merits on the basis of available material that the Plaintiff had proved his possession over the Suit property and the fact that his possession was obstructed by the Defendant and, therefore, decreed the Suit for perpetual injunction against the Defendant. The

Appeal was carried to the District Court, Nashik. The learned Additional District Judge after hearing both the parties, came to the conclusion that the reasoning adopted and findings recorded by the Trial Judge were legal and proper, and, therefore, dismissed the Appeal. Hence, the present Appeal.

3. At the outset, it may be noted that there is no substantial question of law in the above. Both the Lower Courts have came to the conclusion that there was previous partition of the properties and separate possession.

The learned counsel for the Appellant brought to my notice that the revenue record shows that there is joint possession of the parties till today. It was however, alleged that Plaintiff came with theory of oral partition followed by document of memorandum of partition, which was unregistered. It was submitted that it could not be read in evidence and in view of this oral partition, which was not established, and, therefore, it was urged that the lands were in joint possession.

However, it appears from the records that in the course of the pendancy in the lower courts, Court Commissioner was appointed and the exhibit 33 shows two equal parts. It was also observed by the learned Trial Court Judge that in written statement Defendant had admitted that Gut No. 142 was divided in two

parts and the western portion admeasuring 2 H 17 R was portion to the share of the Plaintiff, whereas 2 H and 2 R portion, which was fallen to the share of the Defendant.

4. In view of this position and the fact that no substantial question of law is involved in the above, the Appeal has no merits and stands dismissed.

(P.V. KAKADE, J.)